S.B.CIVIL WRIT PETITION NO.2247/1992

Gauri Shankar
v.
State of Rajasthan & Ors.

Date of Order :: 27th January, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.D.Thanvi, for the petitioner.
Mr. N.M.Lodha, Additional Advocate General.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ the petitioner while giving challenge to the proviso to Rule 48(5) of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as "the Rules of 1986") has also challenged proceedings for recovery of the sum of Rs.1,02,993/- from him against unauthorised mining operation.

At the threshold of hearing counsel for the petitioner has withdrawn his challenge to the validity of proviso to Rule 48(5) of the Rules of 1986. The Court, therefore, is examining validity of proceedings for recovery of sum of Rs.1,02,993/- initiated against the petitioner.

The facts required to be noticed are that the Collector, Sriganganagar under an order dated 18.2.1987 permitted the petitioner for installation of brick kiln at his khatedari land measuring 5 bighas. A mining lease was also granted to the petitioner by the Mining Engineer, Department of Mines and Geology,

Bikaner for excavation of the minor mineral brick earth for a period of ten years, however, the lease was neither executed nor registered by the respondents but the Assistant Mining Engineer, Department of Mines and Geology, Sriganganagar granted various short term permits in favour of the petitioner for excavation of brick earth from the mining area leased out. The mining lease granted to the petitioner was revoked by the Mining Engineer, Bikaner under the recommendation of the Assistant Mining Engineer, Department of Mines and Geology, Sriganganagar by an order dated 1.5.1989.

Being aggrieved by the same the petitioner preferred a writ petition before this Court and the same was registered as DBCivil Writ Petition No.1771/89, Gauri Shankar v. Collector, Sriganganagar & Ors. In the aforesaid writ petition an interim order was passed by this Court on 1.6.1989 staying the operation of the order revoking sanction of the mining lease. The aforesaid writ petition stood dismissed by order dated 3.2.1993 as becoming infructuous due to expiry of the period of disputed lease on 28.11.1991.

The Assistant Mining Engineer, Sriganganagar under a notice dated 5.7.1989 called upon the petitioner to satisfy the demand of Rs.1,02,993/- against alleged illegal mining operation. The petitioner refuted the allegation of the illegal mining operation by way of submitting an explanation

to the notice referred above. An another notice was issued by the Assistant Mining Engineer, Department of Mines and Geology, Sriganganagar on 16.11.1991 making a demand of Rs.2,47,453/- from the petitioner. The Assistant Mining Engineer (Recovery), Sriganganagar according to the petitioner on 11.12.1991 attached his house while proceeding to satisfy the demand as above. The petitioner in these circumstances deposited a sum of Rs.40,000/- on 13.12.1991 and a sum of Rs.10,000/- on 1.1.1992 under protest.

The petitioner has given challenge to the recovery proceedings on the count that no opportunity of hearing was allowed to him while demanding royalty and imposing penalty upon him for alleged illegal mining operation. According to counsel for the petitioner the order passed by the Assistant Mining Engineer determining royalty and penalty is not a speaking and reasoned. The petitioner by giving challenge to the demand made has also assailed validity of the proceedings initiated under Section 229 of the Rajasthan Land Revenue Act, 1956.

Heard counsel for the parties.

There is no dispute that the order imposing penalty under Rule 48 of the Rules of 1986 is a quasi judicial order, such order is always required to be passed after notice and giving an opportunity of

hearing to the effected party. Such an order is also required to be a speaking order and finding should be recorded on basis of evidence available about unauthorised excavation or dispatch of the mineral. In the instant case though the notice was given to the petitioner but admittedly no opportunity of hearing was allowed to him and the orders impugned are also non-speaking orders. The orders nowhere mention as to when inspection was made and in whose presence such inspection was made. It also not give any detail on basis of which respondents reached at the conclusion that the petitioner produced eight lacs bricks by illegal excavation of brick earth. The respondents, therefore, are required to provide an effective opportunity of hearing to the petitioner. The proceeding to satisfy demand being based on an order not passed by adhering principles of natural justice, are bad in eye of law.

This petition for writ is disposed of with a direction to the respondents to proceed against the petitioner under Rule 48 of the Rules of 1986 afresh by providing an opportunity of hearing to him. It is also expected from the respondents to pass a speaking and reasoned order.

However, it is made clear that respondent Mining Department is not required to refund the sum of Rs.50,000/- already recovered from the petitioner till

they decide the issue with regard to illegal mining operation by the petitioner in pursuant to the order above. In the event the petitioner is not found involved in illegal mining operation then the sum of Rs.50,000/- already recovered from him shall be refunded with interest @ 6% per annum.

(GOVIND MATHUR),J.

kkm/ps.